

ACTION - XX

Approval of the Recommendation of the Independent Oversight and Investigations Subcommittee of the Ad Hoc Police Practices Review Commission to Establish a Police Civilian Review Panel

ISSUE:

Board of Supervisors approval of the recommendations of the Independent Oversight and Investigations Subcommittee of the Ad Hoc Police Practices Review Commission to establish a Police Civilian Review Panel, reporting to the Board of Supervisors, for the purpose of building and maintaining public trust and police legitimacy. The Civilian Review Panel will review completed Police Department internal administrative investigations of civilian complaints concerning allegations of abuse of authority and serious misconduct.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors approve the recommendations of the Independent Oversight and Investigations Subcommittee of the Ad Hoc Police Practices Review Commission to establish a Civilian Review Panel with proposed revisions.

TIMING:

Board action is requested on _____.

BACKGROUND:

The Ad Hoc Police Practices Review Commission was created by Chairman Sharon Bulova and endorsed by the Board on March 3, 2015. The purpose of the Commission was to engage the community in an open and transparent process to recommend changes to help the Board and the Police Department achieve the goals of maintaining a safe community, ensuring a culture of public trust, providing for the fair and timely resolution of police-involved incidents and information release, and reviewing Crisis Intervention Training (CIT) and police responses for cases involving mental health.

On October 20, 2015, the Ad Hoc Police Practices Review Commission submitted its final report and recommendations to the Board of Supervisors. On November 17, 2015, the Board of Supervisors approved a process for assigning, prioritizing, reviewing, tracking, and considering the 202 Commission recommendations.

On November 17, 2015, the Board also directed an annual report and a final summary report on the status and implementation of all of the Commission's recommendations. The first annual report shall be presented to the Board by December 13, 2016.

This Action Item is specifically related to the implementation and furtherance of the recommendations of the Independence Oversight and Investigations Subcommittee for the establishment and scope of a police Civilian Review Panel, consistent with the presentations and discussion at the October 25, 2016, Public Safety Committee meeting.

Fundamental to the recommendations of the Independent Oversight and Investigations Subcommittee is that the Board adopt recommended changes, consistent with the Code of the Commonwealth of Virginia and County policies, that will help the County achieve its goals of maintaining a safe community, enhancing a culture of public trust, and ensuring that policies provide for the fair and timely resolution of police-involved incidents. These recommendations are aimed at building and maintaining public trust in the Police Department and its officers by the establishment of a Police Civilian Review Panel, a function in line with the recommendations of the Final Report of the President's Task Force on 21st Century Policing, May 2015. Recommendation 2.8 of that report states, "Some form of civilian oversight of law enforcement is important in order to strengthen trust with the community. Every community should define the appropriate form and structure of civilian oversight to meet the needs of that community."

In its final report, the Commission's Independent Oversight and Investigations Subcommittee made 24 overall recommendations. Seven of those recommendations, numbers 18 – 24 as in the Commission report, were specific to the establishment of the Police Civilian Review Panel and its scope and are listed below as presented in the report:

- 18) Fairfax County shall establish a Civilian Review Panel ("Panel") to review complaints concerning alleged FCPD misconduct.
 - a) Panel members shall be appointed by the Chairman of the Board of Supervisors, with the approval of the Board, for a term of three (3) years, subject to dismissal only for good cause. A Panel member may be appointed to no more than two (2) consecutive terms. The terms of the Panel members shall be staggered. The Panel members shall elect one of their members to serve as Chair of the Panel.
 - b) The Panel shall be composed of seven (7) citizens and two (2) alternates residing in Fairfax County with expertise and experience relevant to the Panel's responsibilities.

- c) Factors to be considered in appointing Panel members include: community and civic involvement; diversity; law enforcement and/or criminal investigative experience, reputation in the community and other factors designed to ensure a balanced Panel representative of Fairfax County. No Panel member shall be a current or former employee of Fairfax County, shall hold a public office, or shall have a relative who is a member of the FCPD. One (1) of the Panel members shall have prior law enforcement experience (other than as a member of the FCPD).
- d) The Panel shall be authorized to retain a criminal investigative consultant to assist it with the fulfillment of its responsibilities.

19) An individual may file a complaint with or request a review of a completed internal FCPD investigation by the Panel concerning an alleged "abuse of authority" or "serious misconduct" by a Fairfax County police officer. The Panel shall not review alleged misconduct that is subject to review by the Auditor.

- a) "Abuse of authority" and "serious misconduct" shall be defined by the Panel and may include, the use of abusive, racial, ethnic or sexual language; harassment or discrimination based on race, color, sex, religion, national origin, marital status, age, familial status, or disability; the reckless endangerment of a detainee or person in custody; and serious violations of Fairfax County or FCPD policies or procedures.
- b) The Panel shall refer any complaint within its scope that it receives to the FCPD for review and handling. Absent good cause, the FCPD shall provide a public report to the Panel within sixty (60) days after receipt of the complaint with respect to its review and handling of the complaint.
- c) Any request for review of a completed FCPD investigation shall be filed, absent good cause as determined by the Panel, within sixty (60) days of the requester being notified of the completion of the internal FCPD investigation.

20) Absent good cause, within forty-five (45) days of receipt of the FCPD investigation report (if any) relating to the alleged misconduct or within forty-five (45) days of the receipt of the FCPD report if there was no IAB investigation, the Panel may schedule a public hearing to review the FCPD investigation.

- a) The complainant and the FCPD (including the involved FCPD officers) shall be afforded the opportunity to personally present evidence, statements, and arguments to the Panel.

b) Command staff and IAB investigators shall appear before the Panel upon request to answer any questions from the Panel as to the investigation and action taken or not taken. The County Executive or his/her designee shall produce any documents or other materials in the possession of the FCPD or other County offices and departments as requested by the Panel. At the Panel's discretion, further investigation by IAB may be requested.

21) The Panel review of the investigation shall be completed and a public report issued within 60 days of the filing of a request for review.

a) If the Panel disagrees with the findings of the investigation, the Panel shall publicly advise the Chairman of the Board of Supervisors who shall refer the Panel's conclusion to the Chief of Police for further consideration.

22) The Panel shall issue an annual report to the public describing its activities for the reporting year, including recommendations to the Board of Supervisors and the Chief of Police, including revisions to FCPD policies, training, and practices that the Panel concludes are needed.

23) The Auditor shall make quarterly reports on its review of IAB investigations and its other work during the preceding quarter, and meet with the Panel at the Panel's request for further review of the Auditor's report and work.

24) Fairfax County should establish an Ad Hoc Police Practices Review Commission every 5 years to review and, as needed, make recommendations concerning FCPD policies and practices, and those of the Independent Police Auditor and the Civilian Review Panel.

These recommendations are also listed on the Ad Hoc Police Practices Review commission Report Recommendations Assignment and Tracking Spreadsheet (Attachment 1) as IOV&I (Independent Oversight & Investigations) 18 through 24, inclusive.

It is recommended that the Board adopt Commission Recommendations 18, 19.a., 19.c., and 23 as written, establishing a Civilian Review Panel.

Based on Board discussion, staff review and recommendations, and a legal review, revisions for Board adoption are proposed for Recommendations 18.a., 18.b., 18.c., 18.d., 19, 19.b., 20., 20.a., 20.b., 21, 21.a., 22, and 24. The proposed revised language for each is as follows:

Recommendation 18.a) Panel members shall be appointed by the Chairman of the Board of Supervisors, with the approval of the Board, for a term of three (3) years, subject to dismissal only for good cause. Panel members will serve at the pleasure of the Board. A Panel member may be appointed to no more than two (2) consecutive terms. The terms of the Panel members shall be staggered. The Panel members shall elect one of their members to serve as Chair of the Panel.

Recommendation 18.b) The Panel shall be composed of seven (7) citizens and two (2) alternates residing in Fairfax County with expertise and experience relevant to the Panel's responsibilities.

Alternate Proposal for Discussion:

The Panel shall consist of nine members, all appointed by the Board of Supervisors. To ensure diversity in membership, representation, and perspective, four shall be named by the Board of Supervisors and five (one each) recommended by the following organizations for appointment: (1) Northern Virginia Chamber of Commerce, (2) Fairfax County Federation of Citizen Associations, (3) A civil rights organization (such as the NAACP or ACLU), (4) Fairfax Bar Association, (5) A designated FCPD police officer membership organization (such as the Fairfax Coalition of Police or the Fraternal Order of Police) (or by consensus of the various police officer membership organizations). No Panel member shall hold a public office and current law enforcement officers shall be ineligible. Members appointed by the Board and Police Organizations shall not be former employees of Fairfax County. Panel members shall not be compensated for their service and shall not be considered employees of Fairfax County.

Recommendation 18.c) Factors to be considered in appointing Panel members include: community and civic involvement; diversity; law enforcement and/or criminal investigative experience, reputation in the community and other factors designed to ensure a balanced Panel representative of Fairfax County. No Panel member shall be a current or former employee of Fairfax County, shall hold a public office or be a candidate for a public office, or shall have a relative who is a member of the FCPD. One (1) of the Panel members shall have prior law enforcement experience (other than as a member of the FCPD).

Additional Proposed Language for Discussion:

Panel members must be at least 18 years of age and must agree to submit to a background check and successfully complete the Fairfax County Police Department's Citizens Police Academy, and other recommended trainings to be determined. Panel members may not have any prior felony convictions or any convictions of moral turpitude. Panel members must not be a plaintiff in civil action against Fairfax County at any time during their application for or membership on the Panel. Applicants selected

for the Panel will be subjected to a criminal background check conducted through the Department of Human Resources.

Recommendation 18.d) ~~The Panel shall be authorized to retain a criminal investigative consultant to assist it with the fulfillment of its responsibilities.~~

Recommendation 19) An individual may file a complaint of any alleged misconduct by a police officer with the Police Department, the Auditor or the Panel to request an investigation by the Police Department. An individual may also request a review of a FCPD completed Police Department internal administrative investigation by the Panel concerning an alleged "abuse of authority" or "serious misconduct" by a Fairfax County police officer. Any request for a review shall be in writing through the Auditor and shall state the specific reason(s) for the request for review. The Panel shall not review alleged misconduct that is subject to review by the Auditor.

The Auditor or designee, in consultation with the Chief of Police or designee, shall determine if a complaint request for review concerns matters which are the subject of pending criminal proceedings. If so, the Auditor or designee shall send a letter informing the complainant that the complaint is being deferred indefinitely pending resolution of the criminal proceedings. The Auditor shall also notify the Board of Supervisors of the deferral. The Auditor shall track the matter and notify the complainant and the Board once the criminal proceedings are closed and the request for review may proceed.

The Auditor, in consultation with the County Attorney's Office, shall determine if a complaint request for review concerns matters which are the subject of pending civil proceedings. If so, the Auditor or designee shall send a letter informing the complainant that the complaint is being deferred indefinitely pending resolution of the civil proceedings. The Auditor shall also notify the Board of Supervisors of the deferral. The Auditor shall track the matter and notify the complainant and the Board once the civil proceedings are closed and the request for review may proceed.

Recommendation 19.b) ~~The Panel shall refer any complaint within its scope that it receives to the FCPD for review and handling. Absent good cause, the FCPD shall provide a public report to the Panel within sixty (60) days after receipt of the complaint with respect to its review and handling of the complaint.~~

For any complaint filed with the Panel and within the scope of the Panel (allegations of abuse of authority and serious misconduct as to be defined by the Panel), the FCPD shall provide a report back to the Panel within sixty (60) days with respect to its review and handling of the complaint. The Panel shall provide an extension if requested by the Chief of Police in order to protect an ongoing criminal or internal affairs administrative investigation, with notice also provided to the complainant. Absent good cause provided by the Police Department for production of the report within a reasonable time period, the Panel may report the matter to the Board of Supervisors, through the Chairman

Auditor. The Board may direct the Chief of Police to ensure completion of the investigation, or to report on the reasons for delay and an expected completion date.

If a complainant is not satisfied with the Police Department's investigation or findings for any allegation made within the scope of the Panel, the complainant may then request a Panel review of the completed Police Department internal administrative investigation.

Recommendation 20) Absent good cause, for any request of review, within forty-five (45) days of receipt of the FCPD investigation report (if any) relating to the alleged misconduct or within forty five (45) days of the receipt of the FCPD report if there was no IAB investigation completed Police Department internal administrative investigation, the Panel may, at its discretion, and through the Auditor, schedule a public hearing to review the FCPD investigation. The Auditor or his or her designee shall send notification of the date and time of the hearing to Panel members, Police Department Internal Affairs Office, the County Attorney's Office, and the complainant. Panel review hearings shall be recorded and records maintained in accordance with the Library of Virginia Records Retention and Disposition schedule.

Recommendation 20.a) The complainant and the FCPD (including the involved FCPD officers) shall be afforded the opportunity to personally present evidence, statements, and arguments to the Panel.

Recommendation 20.b) Command staff and IAB investigators shall appear before the Panel upon request to answer any questions from the Panel as to the investigation and action taken or not taken. The County Executive or his/her designee shall produce any documents or other materials in the possession of the FCPD or other County offices and departments as requested by the Panel. At the Panel's discretion, further investigation by IAB may be requested.

At the hearing, the complainant shall state the specific reason(s) for the request for review, present supporting evidence or new information, and provide statements pertinent to the allegation as stated in the original written request for review (a Request for Review form shall be designed). Information not previously listed on this form cannot be presented at the Panel review, except as deemed appropriate by the Panel.

Upon completion of the complainant's statement, the Police Department representative(s) knowledgeable of the investigation shall present all findings of fact and a review of all evidence collected and received, including witness statements, subject to the following limitations:

1. The statement of any police officer required by the Department to give a statement under the provisions of Garrity v. New Jersey, 385 U.S. 493 (1967) shall not be disclosed in public. The Panel shall have confidential access to the entire statement for the purpose of its

review. The Internal Affairs officer Police Department representative(s) presenting information to the Panel may publicly state only that the officer admitted or denied the allegation, unless the officer consents to the public release of the entire statement.

2. The Panel may convene in private to deliberate; however, any deliberations by the Panel which do not address the alleged improper conduct or performance of duties of an officer shall be conducted in an open public hearing. Neither the police department representative, nor any Panel member shall reveal the identity of any victim of sexual assault, unless authorized to do so by the victim, or of any juvenile.

The Panel, in its discretion, may invite any person previously identified as a witness to appear at such hearings to answer questions proffered by the Panel; provided, however, that the Panel shall not have subpoena powers. The County Executive or his/her designee may require the attendance of any County employee, other than the involved officer(s), whose appearance is requested by the Panel unless such required attendance violates any statutory or constitutional right of the employee. The County Executive may shall also require the providing of any relevant documents or other materials in the possession of the FCPD or other County offices and departments as requested by the Panel unless legal privilege to withhold exists. At the Panel's discretion, further investigation by IAB the Police Department may be requested.

Any police officer(s) subject of the complaint or allegations shall have the right to testify before the Panel, but may not be compelled to appear.

During the Panel's review of a complaint where it is necessary for Panel members to review an officer's personnel record reflecting discipline or an Internal Affairs a Police Department internal administrative investigative case file, each Panel member who is provided a copy of that record or case file shall be required to sign a Notice of Confidentiality, affirming that the file and case record is deemed a personnel record and shall not be disclosed nor shall copies be provided to the public. Prior to providing such files to the Panel, the Auditor or his or her designee, in consultation with the Chief of Police and the Internal Affairs Bureau, shall determine if the file contains information concerning an identifiable juvenile. If the file contains such information, the Auditor shall forward the file to the County Attorney's Office, which shall redact information that identifies a juvenile in conformance with the requirements contained in Code of Virginia § 16.1-301, or any successor provision.

Panel review hearings shall be recorded and records maintained in accordance with the Library of Virginia Records Retention and Disposition schedule.

Recommendation 21) The Panel review of the investigation shall be completed and a public written report issued within 60 days of the filing of a request for review unless good cause exists for an extension, such as a delay due to a pending criminal or Internal Affairs investigation or the unavailability of a key witness. A delay and the cause shall be reported to the Auditor.

- ~~a) If the Panel disagrees with the findings of the investigation, the Panel shall publicly advise the Chairman of the Board of Supervisors who shall refer the Panel's conclusion to the Chief of Police for further consideration.~~
- a) Upon completion of its review, the Panel, in its findings, may:
 - 1. Concur with the findings and determination of the Police Department investigation.
 - 2. Advise the Auditor and the Board of Supervisors that the findings are not supported by the information reasonably available to the Police Department and recommend further review and consideration by the Chief of Police.
 - 3. Advise the Auditor and the Board of Supervisors that in its judgment the investigation is incomplete and recommend additional investigation.
 - 4. Conclude that the complaint is not appropriate for review by the Panel.

Upon a finding by the Panel under provisions 3. or 4. 2. and 3. the Board may direct the Chief of Police to take further action as it deems appropriate.

Recommendation 22) The Panel shall issue an annual written report to the public describing its activities for the reporting year, including recommendations to the Board of Supervisors, Auditor, and the Chief of Police, including revisions to FCPD policies, training, and practices that the Panel concludes are needed. These annual reports shall be delivered to the Board through the Auditor and the Chair of the Board's Public Safety Committee, and then released to the public.

~~Recommendation 24) Fairfax County should establish an Ad Hoc Police Practices Review Commission every 5 years to review and, as needed, make recommendations concerning FCPD policies and practices, and those of the Independent Police Auditor and the Civilian Review Panel.~~

Staff recommends that the Board adopt additional language to define the purpose of a Civilian Review Panel and its scope. The proposed language is as follows:

- 1. It is the purpose of the Civilian Review Panel to ensure that reports and conclusions of the Police Department's internal administrative investigations involving abuse of authority or other serious misconduct are complete, accurate, and factually supported. To that end, the Panel shall have the authority to review these findings, to the extent provided for, when a complainant is dissatisfied with such an investigation.

The Panel may also make recommendations to the Board of Supervisors, Auditor and Chief of Police that specific Police Department policies and procedures be revised.

Panel hearings and reviews shall not be considered civil or criminal proceedings but independent reviews of administrative investigations concerning the performance of sworn police officers.

All Panel hearings shall be open to the public; provided, however, that in the discretion of the Panel for good cause shown, a hearing may be closed upon the request of a party to protect the privacy of individuals such as juveniles and victims of sexual assault. Also, Panel deliberations may be conducted as provided for, but the Panel's decision shall be announced in public once they have concluded their deliberations.

2. The Panel shall not review complaints specific to only the discipline imposed on police officers. The Auditor shall inform the complainant in writing that discipline is not subject to review by the Panel. If, however, the Panel during a review for other allowable reasons questions the discipline imposed they shall refer the matter to the Auditor for review. The Auditor shall review and publicly report annually, in the aggregate, its findings on such complaints of imposed discipline.
3. Following establishment, and prior to any hearings or reviews, the Panel shall craft bylaws and procedures, which shall be subject to approval by the Board of Supervisors. All subsequent amendments to the Panel's bylaws and procedures shall be approved by the Board of Supervisors.
4. Should a matter come before the Panel in which a member of the Panel feels that his or her personal interests may influence his or her ability to hear an issue or case in an impartial manner, that member shall abstain from participating therein, including hearing and/or discussing the particular matter. The Panel member shall indicate to the Chairperson the existence and nature of the conflict, and thereafter the Panel member shall be excused from hearing and/or participating in the matter.
5. The Panel shall report directly to the Board of Supervisors. The Office of Independent Auditor shall provide administrative support to the Panel. The County Attorney's Office shall serve as legal advisor to the Auditor and the Panel. *(this latter may present a conflict that needs to be discussed)*

Draft Board Action Item for the Establishment of a Police Civilian Review Panel – for review and discussion at the October 25, 2016, Board of Supervisors Public Safety Committee Meeting

FISCAL IMPACT:

The Civilian Review Panel will be supported primarily by staff of the Office of Independent Police Auditor. Other associated costs will primarily include as of yet undetermined Police Department and County Attorney's Office staff time and any required materials and supplies for the Panel.

ENCLOSED:

Attachment 1: Ad Hoc Police Practices Review Commission Report Recommendations Assignment and Tracking Spreadsheet

STAFF:

David M. Rohrer, Deputy County Executive
Colonel Edwin C. Roessler Jr., Chief of Police

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